MENTAL HEALTH

REVIEW BOARD

April 1, 1988 - March 31, 1989

Manitoba
Health

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The Mental Health Review Board was formed to hear appeals regarding any aspect of the admission or treatment of a patient in a psychiatric facility.

INTRODUCTION

One of the major changes included in the amendments to The Mental Health Act was the formation of a Review Board to hear appeals regarding any aspect of the admission or treatment of a patient in a psychiatric facility. The Legislation also requires that there be an automatic review of all compulsory patients after the filing of the third certificate of renewal and annually, thereafter.

Presently, there are six Review Board panels that were appointed by the Lieutenant Governor in Council on March 30, 1988. Two of these panels have been appointed for Brandon and four have been appointed to hear appeals at the Selkirk Mental Health Centre, the Eden Mental Health Centre and the Psychiatric Units in the City of Winnipeg.

Each panel consists of three members. By statute, one must be a lawyer who presides at the hearing, one a psychiatrist and one a person who is neither a lawyer or a psychiatrist.

The Review Board falls under the auspices of the Assistant Deputy Minister of Mental Health Services. Private legal counsel was provided for the Board in December 1988. Counsel provides interpretation of the Act and consultation on issues. The Review Board also consults with the Chief Provincial Psychiatrist on amendments and issues.

A Review Board Coordinator was appointed in September 1988 to constitute the panels and to provide administrative control and direction. The Coordinator is required to:

- receive applications for review and acknowledge same
- schedule hearings
- notify the patient, any representative named, and the facility of the date, time and location of a particular hearing
- arrange for all court reporter services
- prepare subpoenas for the chairperson's signature for witnesses
- act as respondent for the Board when representation is requested in court
- provide secure storage for documentation recording the proceedings
- issue final Notice of Decision
- maintain statistics and compile an annual report of review panel activities
- provide an orientation program for newly appointed review panel members
- chair semi-annual conferences of Review Board members

The Mental Health Act establishes two classes of psychiatric patients, voluntary and involuntary. A voluntary patient may discharge himself from a psychiatric facility, whereas an involuntary patient may only be discharged by a certificate of discharge signed by a psychiatrist of that facility.

The Review Board is primarily concerned with involuntary patients and has, upon application, the authority to:

a) review the status of a patient; or

b) review a certificate of leave; or

c) review an opinion that a person is or is not mentally competent to consent or refuse consent; or

d) review an opinion that a person is or is not capable of managing his or her affairs; or

e) authorize specified psychiatric treatment and other related medical treatment without consent; or

f) authorize the medical officer in charge to withhold access to all or part of the clinical record.

BOARD PROCEDURES

The atmosphere of the hearings has been dignified and solemn. Proceedings before the Review Board are designed not to be adversarial in nature. Generally the participants in the hearing have understood its purpose, the order of procedure and their roles in it. Every effort has been made to assist the patient as much as possible in comprehending the process in which they are involved. The patient, however, has not been precluded from testifying on the basis that there is doubt as to his/her competence to swear an oath and has been permitted to give unsworn evidence.

The Order of Evidence proceedings while informal, do follow the procedures that are common in our courts. The Board has the power to require witnesses to give evidence under oath.

The decision of the Board is sent by Registered Mail, or by courier, to all parties, under the signature of the Coordinator.

When reasons for decision are requested, the Coordinator forwards the documentation to legal counsel for the patient and for the psychiatric facility.

ACTIVITIES

a) Applications

The Board has received eighty-four applications requesting hearings. Fourteen of those hearings were completed and lasted anywhere from one hour to ten hours with the average hearing being approximately three hours.

Fifty hearings were cancelled as the patient's status was changed to voluntary. The remaining twenty hearings were cancelled as the applications were withdrawn or the patients were granted certificates of leave, transferred to another province or eloped.

Decisions from fourteen hearings resulted in:

1) eight patients having their involuntary status confirmed

2) two patients having their status changed from involuntary to voluntary

3) three patients confirmed not to be mentally competent to consent or refuse consent

4) three patients confirmed not to be capable of managing their affairs

5) one patient was declared to be capable of managing his affairs

6) authorization to an attending physician for specified psychiatric treatment and other related medical treatment

7) two patients were authorized access to all or part of their clinical records

b) Automatic Reviews

Fifty one cases have been brought up for automatic review. Thirteen hearings were held and the remaining thirty-eight cases had their status changed to voluntary prior to their hearing being held.

As a result of the thirteen hearings completed:

1) nine patients had their involuntary status confirmed

2) three patients had their status changed from involuntary to voluntary

3) one hearing was adjourned

The Review Board was served with a Writ of Mandamus in October of 1988. The Chief Justice dismissed the application in all respects. It was noted that in dismissing the application the Chief Justice held, "that the obligation of the Review Board to promptly review the patient's status, must be viewed realistically and pragmatically within the structure of the Act as a whole. The arrangements that have been made here are reasonable and appropriate".

In November of 1988, the Board received a request to release the court reporter's notes of a hearing where the involuntary status of a patient was confirmed by the Board. The patient has instructed her counsel to prepare her appeal to the Court of Queen's Bench. The court date has not been set as of yet.

The Review Board's counsel is presently trying to resolve an issue with the Health Sciences Centre. The hospital's interpretation of the Act does not require their counsel or staff to be present at Review Board hearings. The Review Board's legal counsel feels that the hospital is failing to respond to the spirit of the legislation and is in fact obstructing the principles of natural justice. This is an isolated situation and has not occurred in any other psychiatric facility or unit.

An orientation meeting was held for all Review Board members in May of 1988. Another meeting was held in December, 1988 with two guest speakers - Dr. Patricia Wightman of the Health Sciences Centre and Ms Janice Blackburn, former lead counsel for the Ministry of Health for Ontario. Review Boards have been in operation for the last five years in Ontario. Ms Blackburn has been involved in the drafting of legislation, court appeals and many of the issues and pitfalls surrounding Review Boards.

There have also been three meetings of the chairpersons to exchange ideas and to establish uniformity of procedures. We have utilized the Audio Visual Link for these meetings to accommodate our Brandon chairs and keep costs to a minimum.

CONCLUSION

The Board recognizes that in order to meet the requirements of the Act, psychiatrists and other hospital staff must encroach upon their already limited time with patients and the Board is appreciative of their efforts.

While in the first year the Board experienced some difficulty with interpretation of the legislation, it is clear that physicians, hospital staff and advocates are trying to comply with the spirit of the Act.

Mental Health is moving into an era involving greater awareness of patients' rights. Our Boards have approached their task in a very conscientious fashion and it is quite evident that the members are dedicated to ensure the best possible care for the mentally ill of Manitoba.

For further information:

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